

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

ERNEST ESPARZA,  
Petitioner,  
vs.  
UNITED STATES OF AMERICA,  
Respondent,

) CR. NO. 03-00127 SOM  
 ) CIV. NO. 07-00375 SOM/LEK  
 )  
 ) ORDER GRANTING (1) PETITIONER'S  
 ) "MOTION WHY GOVERNMENT HAS  
 ) FORWARDED NO COPY OF ANSWER TO  
 ) 28 USC § 2255," (2) RESPONDENT'S  
 ) "MOTION TO CONTINUE TELEPHONIC  
 ) HEARING AND TO EXTEND THE TIME  
 ) WITHIN WHICH THE UNITED STATES  
 ) MAY RESPOND TO ESPARZA'S 2255  
 ) PETITION," AND (3) RESPONDENT'S  
 ) "MOTION FOR EXPANSION OF RECORD"  
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ORDER GRANTING (1) PETITIONER'S "MOTION WHY GOVERNMENT HAS FORWARDED NO COPY OF ANSWER TO 28 USC § 2255," (2) RESPONDENT'S "MOTION TO CONTINUE TELEPHONIC HEARING AND TO EXTEND THE TIME WITHIN WHICH THE UNITED STATES MAY RESPOND TO ESPARZA'S 2255 PETITION," AND (3) RESPONDENT'S "MOTION FOR EXPANSION OF RECORD"

Petitioner Ernest Esparza has filed a "Motion Why Government Has Forwarded No Copy of Answer to 28 USC § 2255." This motion questions why Petitioner has not received the Government's response to his petition, as required by Local Rules. The motion is well taken.

The reason Petitioner has received no response is that the Government has not yet filed a response, although the deadline for filing has passed. The court assures Petitioner that the court also has not seen the Government's response. The Government certainly must serve Petitioner with a copy of the

response so that Petitioner may address it. Petitioner's motion is granted to the extent it asks for an explanation, and the explanation is contained both in this order and in the Government's "Motion to Continue Telephonic Hearing and To Extend the Time within the United States May Respond to Esparza's 2255 Petition." In the Government's motion, Government counsel explains the other demands on his schedule. While Government counsel certainly should have informed the court and Petitioner of his scheduling problems earlier, and Petitioner's dismay is certainly understandable and warranted, the court grants the continuance requested. The Government may file its response no later than November 23, 2007, and must serve Petitioner with a copy of the response. Petitioner may file his reply to the Government's filing no later than January 15, 2008. The telephonic hearing will be held on **Monday, February 11, 2008, at 9:00 a.m.**

The Government also moves to expand the record with the affidavit of Petitioner's former counsel. That motion is also granted. **To avoid confusion, the court directs the Government to file the affidavit, either as a freestanding document or as an attachment to something other than a motion seeking leave to file the affidavit.** Petitioner may respond to his former counsel's affidavit at the same time as he files his reply memorandum (that

is, while replying, no later than January 15, 2008, to the Government's response to his petition).

Petitioner has the court's apology for not having contacted him earlier about the Government's failure to meet its deadline.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, October 22, 2007.



/s/ Susan Oki Mollway  
Susan Oki Mollway  
United States District Judge

United States of America v. Ernest Esparza; CR. NO. 03-00127 SOM;  
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